IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No. 574 of 2000
In
SPECIAL CIVIL APPLICATION No. 36 of 1987
With
CIVIL APPLICATION No. 8441 of 2000
In LETTERS PATENT APPEAL No. 574 of 2000

For Approval and Signature:

HONOURABLE MR.JUSTICE A.L.DAVE
HONOURABLE MR.JUSTICE SHARAD D.DAVE

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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LALBHAI DALPATBHAI INSTITUTE OF INDOLOGY & 2 - Appellant(s)
Versus
SHRI M.GOVINDAN KUTTY & 1 - Respondent(s)

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Appearance :
MR KM PATEL for Appellant(s) : 1 - 3.
None for Respondent(s) : 1,
MR AD OZA for Respondent(s) : 1.2.1,1.2.2
MRS VD NANAVATI for Respondent(s) : 2,
MR MITUL K SHELAT for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE A.L.DAVE

and

HONOURABLE MR.JUSTICE SHARAD D.DAVE

Date : 26/11/2007

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE A.L.DAVE)

1. This Letters Patent Appeal arises out of a judgment and order in Special Civil Application No.36 of 1987 on 20th October, 1999.

2. Original petitioner Malathi Kutty K preferred that petition against the present appellants challenging the termination of her services by order dated 5.12.1986 (Annexure `B'). The petitioner was appointed as a steno-typist by order dated 25.6.1986 in the time scale of 260-6-308-ED-6-326-8-350-EB-8-390-10-400+DA+HRA and City Allowance as per Gujarat University Rules on a probation of one year from the date of appointment and that her confirmation was dependent upon satisfactory performance of duties allotted to her (as can be seen from Annexure `A'). This appointment letter indicates that the appointment was given by appellant no.1. The termination letter was issued by administrative trustee of Lalbhai Dalpatbhai Museum (appellant no.3) and Lalbhai Dalpatbhai Institute of Indology (appellant no.1).

2.1. By virtue of interim relief granted by this Court, the original petitioner came to be reinstated

in service and during pendency of the appeal, she expired while in service. Her heirs and legal representatives, thereafter, appear on record of this matter.

3. The case of the original petitioner was that her services were illegally terminated. No audience was given to her and no procedure was followed and the termination was, therefore, bad in law.

3.1. On the other hand, the case of original respondents no.1 and 2 was that respondent no.3 is independent of respondent no.1, that respondent no.3 did not receive any grant-in-aid from the government, that the petitioner was an employee of respondent no.3 and that the petition was not maintainable, the respondents not being government or instrumentality of the government. It was also the contention that respondent no.3 is not in any way connected with respondent no.4 – Gujarat University and the petition was, therefore, not maintainable.

4. The respondent no.4 – Gujarat University has supported the case of the petitioner before the learned Single Judge so also before us.

5. We have heard learned advocate Mr.Patel for the appellants, learned advocate Mr.Hemang Raval for respondent no.1 (Resp.No.1/1 and 1/2 – the original petitioners) and learned advocate Ms.Nanavaty for respondent no.2 – Gujarat University.

6. Learned advocate Mr.Patel submitted that learned Single Judge erred in not appreciating the fact that appellant no.3 is independent of appellant no.1 and does not receive any grant-in-aid. He submitted that original petitioner was employee of appellant no.3 and, therefore, the petition was not maintainable. He submitted further that the petitioner's services were not found to be satisfactory. The fact that her services were not found to be satisfactory is admitted by the petitioner as can be seen from the communication dated 6.12.1986 addressed by the petitioner to the Administrative Trustee of appellant no.3, and therefore, the termination of services of the petitioner was without any stigma i.e. not by way of punishment or dismissal and, therefore, no procedure was required to be followed. Mr.Patel submitted that since appellant no.3 is an independent institute not affiliated to the Gujarat University, it would not be governed by the regulations which govern the institutes affiliated to the University.

6.1. Mr.Patel lastly submitted that the learned Single Judge has granted an additional relief in favour of the petitioner which was not prayed for in the petition namely the consequential benefits of quashment of order of termination of services. Mr.Patel, therefore, submitted that the appeal may be allowed and the order may be set aside. He relied upon certain judicial pronouncements during the

course of his arguments.

7. The appeal is opposed to by learned advocate Mr.Raval appearing on behalf of Mr.Oza.

7.1. He has drawn our attention to the fact that there is no material on record to show that appellant no.3 is an institute independent of appellant no.1. On the contrary, there is material to show that it is a division of appellant no.1. He has drawn our attention to the letter of appointment of the original petitioner which is issued by appellant no.1 and it is nobody's case that the relationship of employer and employee between appellant no.1 and the original petitioner had snapped at any point of time prior to the termination letter purported to have been written by appellant no.3. He submitted further that the Provident Fund Office has issued a slip which also indicates appellant no.1 as the employer of the petitioner. He, therefore, submitted that the order of learned Single Judge is just, legal and proper and may not be interfered with.

7.2. Mr.Raval submitted that when the termination is held to be illegal and order of termination is quashed and set aside by the learned Single Judge, whether it is stated or not, the petitioner would be entitled to consequential benefits and it, therefore, cannot be said that learned Single Judge granted more than what was prayed for by the petitioners. He submitted that appeal may be dismissed.

8. Mrs.Nanavaty also addressed us on behalf of the University. She supported the case of the original petitioner. According to her, appellant no.1 which is a recognized institution of Gujarat University includes Museum (appellant no.3) and the termination of services of the petitioner by institution was without following the provisions contained in Section 51(A) of the Gujarat Universities Act and Ordinance 168 of the University was illegal.

9. We have considered the submissions made before us by learned advocates. There cannot be any dispute on legal proposition that in a writ petition, while exercising powers under Section 226 of the Constitution of India, Court may not travel beyond the subject matter of the petition (Rhone-Poulenc (India) Ltd., V/s State of U.P., and others, reported in (2000)7 SCC 675). However, the question would be whether in facts of the present case, it can be said that the same principle would apply. We propose to deal with the same in paragraphs to follow.

10. It is clear from the letter of appointment (Annexure `A' to the petition) that the petitioner was appointed as a Steno-typist by appellant no.1 namely Lalbhai Dalpatbhai Institute of Indology and not appellant no.3. The letter of termination (Annexure `B' to the petition) also refers to Lalbhai Dalpatbhai Institute of Indology and last but not the

least, the slip issued by the Regional Provident Fund Commissioner, Ahmedabad (Annexure `I' to the petition) indicates the name of appellant no.1 as the employer which is in respect of the petitioner. This makes the situation clear that the petitioner was an employee of appellant no.1. We may observe that there is no material on record to show that the relationship of employer and employee between appellant no.1 and the petitioner had snapped prior to the letter of termination purported to have been written by appellant no.3 or that a new appointment was made by appellant no.3 and, therefore, learned single Judge was right in holding that the petitioner was an employee of appellant no.1.

11. Now there is no dispute on the fact that appellant no.1 is an institute affiliated to the Gujarat University and would be governed by the Gujarat University Act and the Ordinances issued. There is also no dispute on the fact that the procedure contemplated under Ordinance 168 particularly Clause 12 thereof was not followed while terminating the services of the original petitioner and in this set of circumstances, it cannot be said that learned Single Judge was in error in holding that the termination was bad in law. In our opinion, therefore, no interference is called for in the judgment and oder as far as it relates to quashing and setting aside the order of termination of services.

12. Now examining the question whether the learned Single Judge while granting consequential benefits to the heirs of the deceased – petitioner can be said to have travelled beyond the petitioner, we are of the view that even if a clear direction was not given, the consequences would have followed in favour of the original petitioner or her heirs and, therefore, when learned Single Judge observed that the petitioner shall be entitled for all consequential benefits, he cannot be said to have travelled beyond the subject matter of the petition. The contention of learned advocate Mr.Patel on that count also cannot be accepted and the decision relied upon by him in case of Rhone-Poulenc (India) Ltd., (supra)would not be applicable to the facts of the present case.

13. In view of the above circumstances, we do not find any merits in the appeal. The appeal must fail. Stands dismissed. No order as to costs.

14. In view of the order passed in the Letters Patent Appeal, Civil Application stands disposed of. Interim relief, if any, stands vacated.

(A.L.DAVE, J)

(SHARAD D DAVE, J)

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